HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 31 (S/S) of 2002

Smt. Heera Devi W/o Late Krishna Pandey

vs

State of Uttaranchal through department

of Animal Husbandry, Uttaranchal Dehradun

and others.

Approved for reporting

_____

~~Not approved for reporting~~

Date of decision 07.02.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 31 (S/S) of 2002

Smt. Heera Devi, w/o late Krishna Pandey
r/o village Usail, Tehsil Didihat,
Post Deval-Thal, district Pithoragarh. .....Petitioner.

Versus

1. State of Uttaranchal, through Director department of Animal Husbandry, Uttaranchal, Dehradun.

2. Deputy Director department of Animal Husbandry, Nainital.

3. Director, Pension, Uttaranchal, Dehradun.

4. Director, Pension, U.P., Indira Bhawan Lucknow.

5. State of U.P. through Secretary, department of Animal Husbandry, U.P., Lucknow.

....Respondents.

Sri C.D. Bahuguna, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: February 7, 2006

Hon'ble Rajesh Tandon J.

Heard Sri C. D. Bahuguna, Advocate for the petitioner and Standing Counsel for the respondents.

The present writ petition has been filed for a writ of mandamus directing the respondents to pay the pension and other outstanding dues of her husband to the petitioner w.e.f.

16-03-1983 (when her husband was retired from service on ground of ill-health) to 28-03-1989; and pay Family pension to the petitioner with effect from 29-03-1989 when her husband died due to his continued ill-health.

Briefly stated according to the petitioner the husband of the petitioner was initially appointed on the post of Pashu Sewak, a class IV post, in the department of Animal husbandry in District Pithoragarh as on 10-6-1967 and has put- in more than 15 years of service in the department of Animal husbandry as a class-IV employee to the satisfaction of higher officers and during the entire service period, no adverse remark was awarded to him and his work and conduct remained up to the mark. No disciplinary proceeding was ever initiated against him for any misconduct. In the year 1981-82, when he was posted as Pashu Sewak at Khetikhan, District Pithoragarh, some serious disease developed to petitioner's husband and his health started deteriorating day by day. On 16-03-1983, her husband was compulsorily retired on ground of his continuous ill health and due to the reason of his continuous ill health and he breathed his last on 29-03-1989;

The petitioner has further submitted that since the husband of the petitioner had put-in more than 15 years service in the department of the Animal Husbandry, it was the legitimate expectation of petitioner's husband to get pension after his retirement but he was not paid pension as a result of which proper medical treatment could not be provided to him during his life time and resultantly he died before time.

It has been stated by the petitioner in Paragraph9 and 11 of the writ petition that the Deputy director, Animal husbandry, Kumaon division, Nainital vide its letter dated 20-8-1996,

Annexure-1 to the writ petition, directed the Chief Veterinary officer, Pithoragarh to take appropriate steps for providing Family pension to the petitioner. The relevant portion of the letter of the Deputy director dated 20-08-1996 is reproduced below:

mijksDr i= esa muds }kjk voxr fd;k x;k gS fd muds ifr Ik'kq fpfdRlky; [ksrh[kku esa ifr Ik'kq lsod ds in ij dk;Zjr Fks fdUrq LokLF; [kjkc gksus ds dkj.k fnukad 16&03&83 dks mUgs lsokeqDr fd;k x;k mlds ckn mudk LokLF; [kjkc gksus ds QyLo:Ik fnukad 26&03&86 dks mudh e`R;q gks xbZA

bl izdkj mUgs fnukad 16&03&83 ls 28&03&86 rd thfor j[kus dh isa'ku rFkk mlds ckn muds /keZ iRuh dks isa'ku ugh nh xbZ gSA

vr% d`Ik;k ‘`kkldh; fu;ekoyh ds vuqlkj mijksDr nh tkus okyh isa'ku ij mfpr dk;Zokgh djus dh d`ik djsa rFkk d`r dk;Zokgh ls bl dk;kZy; dks voxr

The Chief Veterinary officer, Pithoragarh supplied all the required papers including service book of petitioner's husband to the Director, Pension, U.P. Lucknow, through the letter dated 12-03-1997, a copy of which has been enclosed as Annexure-2 to the writ petition. The contents of the letter of the Chief Veterinary officer, Pithoragarh is reproduced to below:

“d`i;k mijksDr fok;d vius dk;kZy; ds Ik= la[;k is0fu0@Iks0@86 Ik'kqikyu 64&65 fnukad 16 ebZ 1996 dk voyksdu djsa ftlds }kjk loZ Jh d`.k ik.Ms dh lsok iqfLrdk e`R;q izek.k Ik=] fu;qfDr vkns'k dh izfr rFkk lsok fuo`fr dh vkns'k dh izfr ,oa ikfjokfjd isa'ku ds nkosnkj dk ofjB izek.ki= pkgk x;k Fkk] dks ewy:Ik esa vko';d dk;Zokgh gsrq layXu dj izsfkr fd;k tk jgk gSA

In the supplementary affidavit the petitioner annexed two letters of her deceased husband by which he had demanded pension from the department of Animal Husbandry after his compulsory retirement. One letter is of the month of October 1984 and another letter is of 23/24th September 1985.

The respondents have filed counter affidavit and in paragraph4 of the same it has been stated that the husband of the petitioner had not furnished relevant papers to the department for getting pension; and due to latches on the part of the petitioner's husband, pension was not sanctioned for him. This plea has been taken again in Paragraph 7 and 9 of the Counter affidavit. In reply to the contents of Paragraph 4 of the Counter-affidavit, the petitioner in Paragraph 4 of the Rejoinder affidavit stated the following:

"4. That the contents of Paragraph 4 of the C.A., in the manner stated are not correct. ***In the supplementary affidavit filed in support of*** *the writ petition, the petitioner categorically stated that after compulsory retirement of the husband of the petitioner on ground of continued ill health, he claimed Invalid pension from the department and submitted letters/representations to the Chief veterinary officer, Pithoragarh under whom he was then working and to the other authorities including deputy director Animal Husbandry Nainital. He also stated that one letter/representation was sent in October 1984 to the chief veterinary officer, Pithoragarh and another letter/representation was sent on 23/24th September 1985 to the Deputy director, Animal Husbandry, Nainital and*

thereafter he sent a number of letters/representations to the departmental authorities."

The petitioner further stated in Paragraph5 of the Rejoinder affidavit to the following effect:

"*5. That it is baseless to say or suggest that the petitioner's husband was responsible for not furnishing relevant papers/documents. The respondents have not annexed any paper to show that the departmental authorities demanded any paper/document from the petitioner's husband for providing pension to the petitioner's husband and he did not supply paper/document pursuant to any letter of the department. In fact, it was the duty of the department to provide Invalid pension to the petitioner's husband and to get the necessary papers signed form him but the departmental authorities did not at all care for it and now it is blaming the petitioner for the latches which, in fact, occurred due to the fault of the departmental authorities.*"

From the perusal of the counter and rejoinder affidavit it is established that retrial benefits to a retired person should not be delayed in view of the Hon'ble Apex court in the case- **Dr. Uma Agarwal Vs. State of U.P., reported in JT 1999 (2) SC 359,** where the following observation has been made:

"*Now a days several writ petitions are being filed in this court and various High courts seeking relief for disbursement of retiral benefits, because of inordinate delay in payment of these benefits. As Krishna Iyer J. stated in Stae of Mysore Vs. C.R. Sheshadri & others (1974(4)S.C.C. 308), a retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the*

superannuated public servant-not unusual in government, it is becoming necessary to issue directions, in several cases, for early payment of these dues. In Yet another case in State of kerala and others Vs. M.Padmanabhan Nair (1985(1)SCC 429) this court had occasion to point out that usually the delay occurs by reason of non-production of L.P.C.(Last pay certificate) and the N.L.C. (No liability certificate) from the concerned department but both these matters pertain to matters, records which would be with the concerned Government departments. Since the date of retirement of every Government servant is very much known in advance, we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement can not be over emphasised"

The learned counsel for the petitioner has also referred an authority of the Hon'ble Apex court rendered in the case-**S.K. Mastan Bee Vs. The General manager, South Central Railway, reported in 2002 (8) Supreme Today 487** where the Apex court observed the following Paragraph 6 of the judgment:

"……..It was an obligation of the Railways to have computed the Family Pension and offered the same to the widow of its employee as soon as it became due to her and

also in view of the fact her husband was only a Gagman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights……..”

In view of the above decisions of the Hon’ble Apex court, obviously it is the Government department, which is responsible for not computing and disbursing post retiral dues to a government employee after his retirement on time.

As regards the question of latches in matter of approaching the High court by the petitioner in writ petition for claiming post retiral dues of her husband and for family pension, the learned counsel for the petitioner has referred the letters of the departmental authorities dated 20-08-1996, 12-03-1997, 27-01-1997 25-09-1997, 03-09-2001 and 04-04-2001 issued by the Deputy director of Animal Husbandry, Nainital and the Chief veterinary officer, Pithoragarh, and the Accounts officer of Animal Husbandry department, Lucknow contained in Annexure-1, 2,3,4, and 5 to the writ petition whereby efforts were made by the lower departmental authorities to settle the claim of the petitioner but, in fact, the claim could not be settled. On the basis of the said correspondence of the lower departmental authorities, the learned counsel for the petitioner has submitted that it was the higher departmental authorities itself which caused delay in matter of settling the claim of the petitioner and ultimately the petitioner had to file the present wit petition in the month of January 2002 in this court..

The learned counsel for the petitioner has further submitted that non-payment of monthly pension or family pension to a claimant creates recurring cause of action for the claimant every month, therefore, the delay does not create any legal obstacle. The learned counsel for the petitioner has also

referred and relied an observation of the Hon'ble Apex court rendered in the case-**S.K Mastan Bee Vs. The General manager, South Central Railway, reported in 2002 (8) Supreme Today 487** in support of her submission to the effect that mere delay cannot deprive a claimant of his/her legitimate right of Pension. In the above-referred case, the husband of the claimant died in the year 1969 and she filed writ petition in the Andhra Pradesh High Court in the year 1992, that is, after about 22 years, for claiming Family Pension. The Single judge of the High Court allowed the writ petition but the Division Bench of the same High Court in appeal restricted the benefits of the claimant to certain extent. The claimant filed a Civil Appeal before the Apex court challenging the restrictions in benefits. The Civil appeal was allowed by the Apex court and the judgment and order of the Division bench was set aside. The judgment and order of the learned single Judge was affirmed. The observation of the Apex court on the question of delay in Paragraph 6 of the judgment is reproduced to below:

"*6 On the death of the husband of the appellant, it was obligatory for her husband's employer, viz., Railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to litigation. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. ……..The Division bench also while agreeing with the learned single*

Judge observed that the delay in approaching the Railways by the appellant for the grant of Family pension was not fatal……..".

It has been held by the Apex Court in the case- **D.S. Nakara and others Vs. Union of India, reported in AIR 1983 SC 130**, that pension is neither a bounty nor a grace depending upon the sweet will and pleasure of the employer but is a valuable right of the employee.

The Apex court in the case-**Kapila Hingorani Vs. State of Bihar, reported in 2003 (7) AIC 18 SC** has held as under:

"The States of India are welfare States. They having regard to the Constitutional provisions adumbrated in the Constitution of India and in particular Part IV thereof laying down the Directive Principles of the State Policy and Part IVA laying down the Fundamental Duties are bound to preserve the practice of maintain the human dignity."

In the case-**Smt. Parwati Pande Vs. State of Uttaranchal and others, reported in 2004 (1) U.D.603,** I made certain observations in Paragraph 11, 12 and 13 of the judgment, which are reproduced as under:

"11. It may be observed at this stage that payment of Family pension to the petitioner for the services rendered by her husband is a part of Article 21 of the Constitution of India, which reads as under:

"21. Protection of Life and personal liberty- *No person shall be deprived of his life or personal liberty except according to procedure established by law.".*

12. In the case Islamic Academy of Education Vs. State of Karnataka (2003) 6SCC 697 the Apex court has relied upon

the judgment in Kapila Hingorani Vs. State of Bihar (2003) 6 SCC 1: JT (2003) 5 SC 1 and Munn Vs. Illinois 94 US 113: 24 L Ed 77 (1877) and has observed human condition in the light of Article 21 of the Constitution of India. The observation of the Apex court are quoted below:

"Recently Kapila Hingorani Vs. State of Bihar (Supra) a bench of this court noticed the following observations of Field J. in Munn V. Illinois as to what is life, which was in the following terms:

Something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed."

13. It is well settled proposition of law that award of pension is not a bounty from the employer or an act of charity. It is the indefeasible right of the employee and after his death of his dependants and family members……."

The Apex court in the case-**State of Kerala Vs. M. Padmanabhan Nair reported in 1985 (1) S.C.C. 429: A.I.R. 1985 SC 356,** observed the following on the payment of penal interest:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decision of this Court, valuable rights and property in their hands and ***any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment****."*

In the case of ***Dr. Uma Agarwal (Supra),*** the Apex court observed as under on the question of penal interest in Paragraph2 and 7 of the judgment:

"2…. It would not be unreasonable to direct that there would be a liability to pay penal interest on these retirement benefits. In several cases, decided by this court, interest at the rate of 12% per annum has been directed to be paid by the State."

7. Therefore, this is a fit case for awarding interest to the petitioner. We do not think that for the purpose of computation of interest, the matter should go back. Instead, on the facts of the case, we quantify the interest payable at Rs. 1 lakh and direct that the same be paid to the petitioner within two months from today."

The respondents have neither denied the fact in the Counter-affidavit that the petitioner's husband was compulsory retired from service on ground of his illness on 16-03-1983 nor have come up with any plea that the petitioner's husband was not eligible or qualified to get pension on any ground. The writ petition has been contested by the respondents only on the ground that the petitioner's husband did not furnish relevant papers for claiming pension in time after his compulsory retirement.

Normally an employee is held entitled for retirement pension only when he has put-in at least 10 years continuous service in the department. Since the petitioner had admittedly put-in more than 15 years continuous service in the department, petitioner's husband was entitled for retirement pension and the respondents have not controverted the claim of the

petitioner for her husband's retirement pension on merits and have rather contested it on latches.

The learned counsel for the petitioner has also submitted that under Rule 6 of the U.P. Retirement Benefits Ruts, 1961, family pension is payable to the family of such deceased employee who has put in minimum period of 10 years service in the Govt. department. Since the petitioner had admittedly put in more than 15 years continuous service in the department, the petitioner was entitled for Family pension after the death of her husband.

The submission made by the petitioner in Paragraph 22 of the writ petition shows that the petitioner is a very poor lady and after the death of her husband she is leading a lonely life and she has no independent means of her livelihood. She is dependent on the outstanding dues of pension of her husband and the amount of Family pension, which she is entitled to get after the death of her husband. The respondents have not denied the contents of Paragraph 22 of the wit petition in Paragraph 6 of the Counter-affidavit.

Having given my anxious consideration to the facts of the case, I come to the conclusion that the petitioner's husband had put-in his long service of about 15 years in the department of Animal Husbandry with a legitimate expectation that on retirement he would get all benefits of service which as a matter of right is afforded to every employee after his retirement but due to inaction on the part of the departmental authorities, he was deprived of his legitimate dues of post retrial benefits during his life time and he ultimately died on 29-03-1989 without getting the fruit of pension for his long service to the Department. The petitioner was also deprived of her legitimate

dues of family pension. In view of these facts, the respondents are liable to pay penal interest to the petitioner on the entire outstanding dues.

In view of the above observations, the petitioner is entitled to get pension and other outstanding dues of her husband w.e.f. 16-03-1983, and arrears of family pension with effect from 29-03-1989 i.e. the date of death of her husband. The petitioner is also entitled for interest @ 9% p.a on the outstanding dues of Pension of her late husband and on arrears of her family pension.

Consequently, writ petition is allowed. A writ of Mandamus is issued directing the respondents to pay the pension w.e.f 16-03-1983 to 28-03-1989 and other outstanding dues of her husband to the petitioner and thereafter family pension to the petitioner according to rules. The petitioner shall get 9% interest on all outstanding amounts. The entire dues must be satisfied within a period of two months from today.

No order as to costs.

Rajesh Tandon J.

Dated: February 7, 2006

*Dhyani